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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,943	11/13/2003	Gary Workman	00290P0021US	9536

32116 7590 09/26/2006

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
500 W. MADISON STREET  
SUITE 3800  
CHICAGO, IL 60661

EXAMINER
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DESAI, ANISH P

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/712,943	WORKMAN, GARY	
	Examiner	Art Unit	
	Anish Desai	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-21 is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The applicant's arguments in response to the Office action dated 03/23/06 have been fully considered.

1. 102 type rejections of Kaufman et al. (US 5,102,710) are withdrawn in view of the present amendment and response (see pages 2-3 of 06/26/06 amendments).
2. 103 type rejections of Hadley et al. (US 3,545,263) in view of Peacock et al. (US 4,534,225), and further in view of Wilhelm Muhm (US 3,295,278) are maintained.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

In this Office action regarding claims 1 and 19, the recitation "a test apparatus for strength testing of concrete masonry unit" in claim 1 is not given any patentable weight because the preamble is directed to "An unbonded capping system". From the specification, it seems that the unbonded capping system of the applicant only includes a plastic sheet that is laminated to a rigid foam board (page 2, lines 10-14 and page 4, line 14 of specification). Therefore, the test apparatus does not constitute any structural part of the unbonded capping system of the presently claimed invention. It is the examiner's position that claims 1 and 19 only require rigid, rectangular foam board and a plastic sheet laminated to the rigid foam board. Further the recitation "for strength

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testing of concrete masonry units" is interpreted as mere intended use of the unbonded capping system. Similarly, with respect to claim 13, the recitation "In a capping system for compression testing of concrete masonry units including first and second platens" is not given any patentable weight because the specification does not clearly identify what are the structural components of "a capping system". The only conclusion the examiner can reach from the specification regarding a capping system is that the capping system comprises a pair of laminated compression pads and each pad has a plastic sheet laminated to it (page 5, lines 6-13). Thus, the test platens are not part of the capping system. Further regarding claim 13, the recitation "for compression testing of concrete masonry units" is interpreted as an intended use of the capping system. Any reference disclosing a pair of rigid, rectangular foam with a plastic sheet laminated to the ~~said~~ foam will read on claim 13. Additionally with respect to claims 1, 7, 13, and 19 the recitations "to be received on a face of a concrete masonry unit" (claims 1 and 19), "to be received on one face of a concrete masonry unit" (claims 7 and 13), "being engagable" (claims 1, 7, 13, and 19), "engaging the face of the concrete masonry unit to provide even load distribution during testing" (claims 1, 7, and 13) are considered as mere intended use of an unbonded capping system and a capping system, because said recitations do not structurally limit the claimed unbonded capping system or the capping system.

3. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelch et al. (US 5,695,870).

Kelch discloses a laminated foam insulation board having enhanced strength and resistance to bending and breaking (abstract). Regarding claims 1 and 2, Kelch

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discloses a thermoplastic face film adhered to the plastic foam (abstract) wherein the plastic foam is formed of expanded polystyrene (column 4, lines 32-33). With respect to claims 3 and 4, Kelch teaches the polystyrene foams have density of from about 10 kg/m<sup>3</sup> to about 150 kg/m<sup>3</sup>, which reads on applicant's claimed polystyrene foam board having density greater than 2 lb/ft<sup>3</sup> (32 kg/m<sup>3</sup>) and 3 lb/ft<sup>3</sup> (48 kg/m<sup>3</sup>). With respect to claim 6, Kelch teaches the facer film may be laminated to the present foam board by any conventional method known in the art such as hot roll lamination of a heat activated adhesive layer on the facer film (column 3, lines 44-48).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelch et al. (US 5,695,870).

With respect to claims 14-16, 18, and 20 please see previously disclosed invention of Kelch. Kelch is silent as to teaching of pair of laminated compression pads, however since Kelch already discloses one laminated compression pad (a plastic film laminated to expanded polystyrene foam it would have been obvious to provide a second compression pad because this involves only a routine skill in the art.

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5. Claims 5, 17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelch et al. (US 5,695,870) in view of Link Jr. et al. (US 4,566,558).

The invention of Kelch is previously disclosed. Kelch further teaches the foam board having thickness of about 0.25 inch to about 1 inch (column 4, lines 43-44). Kelch is silent as to teaching of plastic sheet has a thickness of about 0.06 inches. However, Link teaches a noise barrier with plastic foam slabs attached to and sandwiched between a plastic sheets (abstract). The plastic foam slab of Link includes polystyrene foam (column 4, lines 4-5). Further Link teaches the thickness of the plastic foam to be about 0.06 inches. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to laminate a plastic film with thickness of 0.06 inches to polystyrene foam of Kelch because it known in the art to laminate a polystyrene foam with a plastic film with thickness of 0.06 inches.

6. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hadley et al. (US 3,545,263) in view of Peacock et al., and further in view of Wilhelm Muhm (US 3,295,278) substantially as set forth in 03/23/06 Office action.

Hadley discloses a compression-testing machine (see Title). The machine is designed for testing concrete blocks by compression (Column 1, lines 50-53). The machine of Hadley includes a lower platen and an upper platen. A test piece is placed between the said platens (Column 1, lines 53-59).

Hadley is silent as to teaching of a plastic sheet laminated to an expanded polystyrene foam board using an adhesive, the expanded polystyrene foam board engaging the face of the concrete masonry unit, the rigid foam board comprises

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expanded polystyrene foam board with density of 2 lb/ft<sup>3</sup> and 3 lb/ft<sup>3</sup>, the thickness of the foam board to be 0.5 inch, and the thickness of the plastic sheet to be about 0.06 inch. However, Peacock teaches a method and apparatus for supporting concrete testing samples (Abstract). The invention of Peacock relates to concrete sample testing and support means therefor comprising end caps and removable molded elastomeric insert pads for positioning over the ends of cylindrical concrete sample (Column 1, lines 9-12). According to Peacock, the use of the pads allows uniform load distribution during the loading which in turn results in compressive stress results more truly representing the cylinders (Column 2, lines 3-6).

Peacock is silent as to teaching of a rigid foam board comprising an expanded polystyrene foam board, a plastic sheet laminated to the expanded polystyrene foam board with an adhesive, the thickness of the plastic sheet and the polystyrene foam, and the density of the polystyrene foam as claimed in the present invention. However, Wilhelm teaches a laminated load bearing structure wherein the load bearing structure comprises a plastic foam layer laminated with at least one layer of covering or facing (Column 1, lines 29-30) wherein the facing layer or covering are designed to impart desired and necessary resistance to stress so that the structure is load bearing (Column 2, lines 7-10). Note that the applicant is also concerned with providing a system for strength testing of concrete masonry units wherein a plastic sheet laminated to the rigid foam board with the foam board engaging one face of the concrete masonry unit provide even load distribution during testing (specification, page 2). Further, Wilhelm teaches that plastic foams such as polyurethane or phenol-aldehyde can be used,

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however the polystyrene foam sheet has been found most advantageous to use (Column 2, lines 3-6). With respect claims 3,4, 9,10, 15,16, and 20, although Wilhelm does not explicitly teach the density of the polystyrene foam, it is known that the polystyrene foams have density of from about  $70 \text{ kg/m}^3$  ( $4.37 \text{ lbs/ft}^3$ ) as evidenced by Kelch et al. (US 5,695,870, Column 6, lines 27-28). Further although Wilhelm does not explicitly teach the thickness of the plastic foam as claimed in the present invention, however since the thickness is recognized as a result effective variable, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the thickness of the plastic foam as claimed in the presently claimed invention, motivated by the desire to optimize the strength of the plastic foam.

Additionally, Wilhelm does not explicitly teach the plastic film laminated to the rigid foam board, it is known in the art to laminate a plastic film to the polystyrene foam to enhance the strength of the polystyrene foam as evidenced by Kelch et al. (US 5,695,870, Column 5, lines 47-48 and Column 3, lines 49-52). Although Wilhelm does not teach the thickness of the plastic film as claimed in the present invention, since the thickness is recognized as a result effective variable, it would have been obvious to one having ordinary skill in the art at the time invention was made to choose the thickness of the cover layer of Wilhelm in the claimed thickness range, motivated by the desire to optimize the strength of the plastic foam layer. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the polystyrene foam layer laminated with a plastic film in the invention of Peacock as



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compressive pads, motivated by the desire to uniformly distribute the load over the concrete cylinder while the cylinder is undergoing compressive loading.

***Response to Arguments***

7. Applicant's arguments see pages 2-4, filed 12/30/05 have been fully considered but are not persuasive.

103 rejections of Hadley, Peacock, and Muhm are maintained for the following reasons. The applicant argues that the combination of Hadley, Peacock, and Muhm is improper. The applicant argues that Hadley does not teach or suggest any material disposed between the platens and the concrete block. The examiner recognizes that Hadley is silent as to teaching of a material between the platens and the concrete block. However, the examiner is not relying on Hadley to teach such feature but on the reference of Peacock, which discloses elastomeric pad between the concrete and platens. The applicant asserts that Peacock teaches away from use of a foam board, which would not be reusable. The examiner respectfully disagrees. The examiner finds no suggestion or teaching in Peacock that would indicate that a foam board cannot be used in his invention. It is unclear to the examiner as to where ~~does~~ the applicant finds such teaching or suggestion in the reference of Peacock. Additionally the applicant argues that there is no teaching or suggestion in Muhm regarding use of plastic sheeting. The examiner respectfully disagrees, at column 1, lines 65-67 Muhm teaches use of a bonding film such as polyvinyl alcohol in order to improve the adhesion of the plastic foam and covering layers to each other. The polyvinyl alcohol bonding film of Muhm reads on the plastic sheet. Accordingly art rejections are maintained.

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**Conclusion**

This Office action is made Non-Final because new grounds of rejections are introduced.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anish Desai whose telephone number is 571-272-6467. The examiner can normally be reached on Monday-Friday, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

APD



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